

CHAPTER 46

GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTING

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GENERAL PROVISIONS

46-0100 Introduction

A. Authority for Local Rules of Purchasing Procedure

Pursuant to the authority granted to the City of Beaverton by enactment of ORS 279A.065, the City hereby elects to establish its own Rules of procedure for Public and Personal Services Contracts. The Model Rules of Procedure for Public Contracts adopted by the Attorney General under authority of ORS 279A.065 does not apply to the City of Beaverton. Instead, the Rules of procedure for Public and Personal Services Contracts applicable to the City of Beaverton are those contained herein. These local Rules of purchasing procedure originate separately from those of the State of Oregon, although the provisions herein often parallel those of the Attorney General's Model Public Contract Rules. These local Rules of purchasing procedure shall be known and may be cited as the "Beaverton Purchasing Code."

The Beaverton Purchasing Code is organized in six parts.

1. Chapter 46 sets forth Rules generally applicable to all Public Contracts;
2. Chapter 47 describes how the City procures Goods and Services;
3. Chapter 48 contains special Rules for the City's selection of Architects, Engineers, Land Surveyors and other related professional service, but these Rules apply only in limited circumstances, such as when the City partners with the State on a Contract to construct a Public Improvement;
4. Chapter 49 includes Rules for the solicitation and Award of Public Improvement Contracts and includes provisions affecting the work of Contractors, subcontractors and laborers;
5. Chapter 50 sets forth classes of contracts that are exempt from the general requirements for competitive bids and proposals; and
6. Chapter 51 provides the procedures for the City's disposal of Surplus Property.

B. Specific Provisions Control Over General Provisions

In the event of conflict between Rules in chapter 46 and Rules in chapters 47, 48, 49, 50 and 51, the Rules in chapters 47, 48, 49, 50 and 51 take precedence over the Rules in this chapter 46.

C. Conflict with Federal Statutes and Regulations

Except as otherwise expressly provided in ORS 279C.800 through ORS 279C.870, and notwithstanding ORS chapters 279A, 279B, and ORS 279C.005 through 279C.670, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of ORS chapters 279A, 279B, and ORS 279C.005 through 279C.670 or the Beaverton Purchasing Code, or require additional conditions in Public Contracts not authorized by ORS chapters 279A, 279B, and ORS 279C.005 through 279C.670 or these Rules.

D. Correction of Scrivener's Errors.

In preparing the codified editions of the Beaverton Purchasing Code for publication and distribution, the City Attorney shall not alter the sense, meaning, effect or substance of this resolution, but within such limitations may:

1. Renumber or rearrange chapters and sections;
2. Combine chapter or sections into other chapters or sections;
3. Divide chapters or sections into other chapters or sections so as to give to distinct subject matters a distinct chapter or section number or letter;
4. Substitute a reference to the proper chapter or section;
5. Substitute figures for written words and vice versa;

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6. Make uniform the manner the Beaverton Purchasing Code and its chapters and sections are referred to, for example allowing the phrase “these Rules” to be changed to “this code” and the like;
7. Change titles and captions of the Beaverton Purchasing Code, its chapters or sections;
8. Change capitalization for the purpose of uniformity;
9. Correct manifest clerical, typographical, grammatical, or punctuation errors;
10. Correct obviously misspelled words;
11. Change references to agree with renumbered, re-titled or re-lettered chapters or sections or to properly reflect references to other statutes; and
12. Conform the provisions of the Beaverton Purchasing Code to any future amendment, revision, or re-enactment of a duly enacted ordinance or resolution of the City Council or Contract Review Board.

46-0110 Definitions

Unless a different definition is specifically provided herein, or context clearly requires otherwise, the following capitalized terms have the meanings set forth below. Additionally, any term defined in the singular includes the meaning of the plural, and vice-versa. A term that is stated in the Public Contracting Code and not defined herein, but is defined in a similar context under Oregon law, may be defined for use herein consistent with that state law definition.

Addendum

An addition to, deletion from, a material change in, or general interest explanation of a Solicitation Document. In the plural, may be referred to as either Addendums or Addenda.

[OAR 137-046-0110]

Administering Contracting Agency

A contracting agency that solicits and establishes the Original Contract for procurement of Goods, Services or Public Improvements in a Cooperative Procurement set forth in ORS 279A.200(1)(a). For Interstate Cooperative Procurements, the meaning of the term includes the entities specified in ORS 279A.220(4).

[ORS 279A.200; OAR 137-046-0110]

Advantageous

In the City’s best interests, as assessed according to the judgment of the City.

[OAR 137-047-0100]

Affected Person or Affected Offeror

A Person whose ability to participate in a Procurement is adversely affected by the City’s decision.

[OAR 137-047-0100]

Architect

A Person defined by and described in ORS 671.010 to 671.220.

[ORS 279C.100]

Award

As the context requires, either identifying or the City’s identification of the Person with whom the City intends to enter into a Contract following the resolution of any protest of the City’s selection of that Person and the completion of all Contract negotiations.

[OAR 137-046-0110]

Bid

A Written response to an Invitation to Bid.

[OAR 137-046-0110]

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Bid Security

A surety bond, irrevocable letter of credit, cashier's check or certified check attached to a bid as security in which a third party agrees to be liable to pay a certain amount of money in the event a selected Bidder fails to accept the Contract as Bid.
[ORS 279C.365 (4)]

Bidder

A Person that submits a Bid in response to an Invitation to Bid.
[ORS 279A.010]

Change Order

An amendment to a Contract providing for more or less work or product and that is reasonably related to the scope of work under the Original Contract, including Change Orders, extra work, field orders, or other change in the original specifications that increases or decreases the Original Contract Price.

City

The City of Beaverton, a municipal corporation and a contracting agency. Unless the context requires otherwise, "City" also shall refer to the Mayor or Mayor's Designee.

City Council

The City Council of Beaverton, as established by City Charter.
[BC 1.01.020]

Closing

The date and time specified in a Solicitation Document as the deadline for submitting Offers.
[OAR 137-046-0110]

Competitive Range

The Proposers with whom the City will conduct discussions or negotiations if the City intends to conduct discussions or negotiations in accordance with BPC 47-0262 or OAR 137-049-0650 as incorporated by reference into BPC 49-0600.
[OAR 137-046-0110]

Conduct Disqualification

A Disqualification pursuant to ORS 279C.440.
[OAR 137-049-0120]

Construction Manager/General Contractor

A method of Public Improvement contracting that uses a construction manager to perform one or more of the following value engineering: act as general Contractor; coordinate and manage the building process; provide General Contractor expertise; establish a Guaranteed Maximum Price for construction; or be a member of the construction team with the Agency, Architect/Engineers or other consultants as the City or the project may require.
[OAR 137-049-0610]

Contract

A contract for sale or other disposal, or a purchase, lease, rental or other acquisition, by the City of personal property, Services, including Personal Services, Public Improvements, Public Works, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement. "Contract" does not include Grants.
[OAR 137-046-0100]

Contract Price

As the context requires, the maximum monetary obligation that the City either will or may incur under a Contract, including bonuses, incentives and contingency amounts, if the Contractor fully performs under the Contract.
[OAR 137-046-0110]

Contract Review Board

The City Council of the City of Beaverton when acting in its capacity pursuant to BPC 2.03.210 to 2.03.214.
[OAR 137-046-0110]

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Contractor

The Person with whom the City enters into a Contract.

[OAR 137-046-0110]

Cooperative Procurement

A procurement conducted by or on behalf of one or more contracting agencies, including, but not limited to, multi-party contracts and price agreements.

[ORS 279A.200]

Cooperative Procurement Group

A group of contracting agencies joined through an intergovernmental agreement for the purposes of facilitating Cooperative Procurements.

[ORS 279A.200]

Days

Calendar days, unless otherwise specified.

[ORS 279A.010]

Descriptive Literature

Written information submitted with the Offer that addresses the Goods and Services included in the Offer.

[OAR 137-046-0110]

Design Build

A form of Procurement that results in a Public Improvement Contract in which the construction Contractor also provides or obtains specified design Services, participates on the project team with the City, and manages both design and construction. In this form of Contract, a single Person provides the City with all of the Personal Services and Work necessary to both design and construct the project.

[OAR 137-049-0610]

DBE Disqualification

A disqualification, suspension or debarment pursuant to ORS 200.065, 200.075 or 279A.110.

Disqualification

The preclusion of a Person from contracting with the City for a period of time in accordance with BPC 49-0370.

Disqualification may be either a Conduct Disqualification or a DBE Disqualification.

[OAR 137-049-0110]

Electronic Advertisement

A Solicitation Document, Request for Quotes, request for information or other document of the City that invites participation in the City's Procurements made available over the Internet via (a) the World Wide Web or some other Internet protocol; or (b) the City's Electronic Procurement System.

[OAR 137-046-0110]

Electronic Procurement System

An information system that Persons may access through the Internet using the World Wide Web or some other Internet protocol or that Persons may otherwise remotely access using a computer that enables Persons to send Electronic Offers to the City and that enables the City to post Electronic Advertisements, receive Electronic Offers, and conduct other activities related to a Procurement.

[OAR 137-047-0330]

Emergency

Circumstances that create a substantial risk of loss, damage, interruption of Services or threat to public health or safety that require prompt execution of a Contract to remedy the condition.

Energy Savings Performance Contract (ESPC)

A Public Improvement Contract between the City and a Qualified Energy Service Company for the identification, evaluation, recommendation, design and construction of Energy Conservation Measures, including a Design-Build Contract, that guarantee energy savings or performance.

[OAR 137-049-0610]

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Engineer

A person who is registered in this state and holds a valid certificate to practice engineering in this state as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002(2).
[ORS 279C.100]

Facsimile

A document that has been transmitted to and received by the City in a format that is capable of being received via a device commonly known as a Facsimile machine (e.g. a Facsimile Bid). A Facsimile machine allows hard copy documents (Written, typed or drawn material) to be sent over telephone lines and printed in another location.

Goods

Supplies, equipment, materials, or any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, or any combination of these items.
[OAR 137-046-0100]

Grant

Depending upon the context:

1. City as Grant Recipient

An agreement under which the City receives moneys, property or other assistance, including but not limited to federal assistance that is characterized as a Grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, from a grantor for the purpose of supporting or stimulating a program or activity of the City and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the Grant conditions; or

2. City as Grant Provider

An agreement under which the City provides moneys, property or other assistance, including but not limited to federal assistance that is characterized as a Grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient and in which no substantial involvement by the City is anticipated in the program or activity other than involvement associated with monitoring compliance with the Grant conditions.

3. Contracts not Grants

Grant does not include a Public Contract for a Public Improvement, for Public Works, as defined in ORS 279C.800, or for Emergency work, minor alterations or ordinary repair or maintenance necessary to preserve a Public Improvement, when under the Public Contract the City pays, in consideration for Contract performance intended to realize or to support the realization of the purposes for which Grant funds were provided to the City, moneys that the City has received under a Grant.

[ORS 279A.010]

Interstate Cooperative Procurement

A Permissive Cooperative Procurement in which the Administering Contracting Agency is an in-State or out-of-State governmental body that is authorized under the governmental body's laws, Rules or regulations to enter into Public Contracts and in which one or more of the participating agencies are located outside this state.

[ORS 279A.200]

Invitation to Bid or ITB

The Solicitation Document issued to invite Offers from prospective Contractors.

[ORS 279B.055 or 279C.335]

Joint Cooperative Procurement

A Cooperative Procurement in which the participating contracting agencies or the Cooperative Procurement Group and the agencies' or group's contract requirements or estimated contract requirements for price agreements are identified.

[ORS 279A.200]

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Land Surveyor

A person who is registered in this state and holds a valid certificate to practice surveying in this state as provided in ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002(5).
[ORS 279C.100]

Notice

Any of the alternative forms of public announcement of Procurements, as described in BPC 49-0210.

Offer

A Written offer to provide Goods or Services in response to a Solicitation Document.
[OAR 137-0046-0110]

Offeror

A Person who submits an Offer.
[OAR 137-0046-0110]

Opening

The date, time and place specified in the Solicitation Document for the public Opening of Offers.
[OAR 137-0046-0110]

Original Contract

The initial contract or price agreement solicited and Awarded during a Cooperative Procurement by an Administering Contracting Agency.
[ORS 279A.200]

Out-of-State Contractor

A Contractor that is not domiciled in or registered to do business in the State of Oregon.
[ORS 279A.120]

Oregon Cooperative Purchasing Program (ORCPP)

A program organized through intergovernmental agreement that allows its members to utilize certain State Price Agreements for Goods and Services. ORCPP eligible entities include cities, counties, school districts, special districts, Qualified Rehabilitation Facilities, residential programs under Contract with the Oregon Department of Human Services, United States governmental agencies, Native American Indian tribes and agencies of Native American Indian tribes.

Oregon Procurement Information Network or ORPIN

The Electronic Procurement System of the Oregon Department of Administrative Services.

Permissive Cooperative Procurement

A Cooperative Procurement in which the purchasing contracting agencies are not identified.
[ORS 279A.200]

Person

A natural person capable of being legally bound, a sole proprietorship, a corporation, a partnership, a limited liability company or partnership, a limited partnership, a for-profit or non profit unincorporated association, a business trust, two or more persons having a joint or common economic interest, any other person with legal capacity to contract or a public body.
[ORS 279A.010]

Personal Services

Services designated under ORS 279A.055, including (1) those services described at BPC 47-0010 and (2) those architectural, engineering, land surveying and related services described at ORS 279C.100.

Personal Services Contract

A Contract or member of a class of Contracts that the City's Contract Review Board either has designated as a Personal Services Contract pursuant to ORS 279A.055 or has described as a Personal Services Contract at BPC 47-0010.

Price Agreement

A Public Contract for the procurement of Goods or Services at a set price with either:

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1. No guarantee of a minimum or maximum purchase; or
2. An initial order or minimum purchase combined with a continuing Contractor obligation to provide Goods or Services in which the City does not guarantee a minimum or maximum additional purchase.
[ORS 279A.010]

Procurement

The act of purchasing, leasing, renting or otherwise acquiring Goods or Services. Procurement includes each function and procedure undertaken or required to be undertaken by the City to enter into a Public Contract, administer a Public Contract and obtain the performance of a Public Contract under the Beaverton Purchasing Code or the Public Contracting Code.
[ORS 279A.010]

Product Sample

The exact Goods or a representative portion of the Goods offered in an Offer, or the Goods requested in the Solicitation Document as a sample.
[OAR 137-046-0110]

Project Manager

The City employee assigned responsibility for the day-to-day management of a Public Improvement Contract.

Proposal

A Written response to a Request for Proposals.
[OAR 137-046-0110]

Proposer

A Person that submits a Proposal in response to a Request for Proposals.
[ORS 279A.010]

Public Contract

A sale or other disposal, or a purchase, lease, rental or other acquisition, by the City of personal property, Services, including Personal Services, Public Improvements, Public Works, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement. Public Contract does not include Grants.
[ORS 279A.010]

Public Contracting Code

ORS chapters 279A, 279B and 279C.
[ORS 279A.005]

Public Improvement

Projects for construction, reconstruction or major renovation on real property by or for the City. “Public Improvement” does not include Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a Public Improvement. “Public Improvement” also does not include projects for which no funds of the City are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection.
[ORS 279A.010]

Public Works

Includes, but is not limited to, roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by the City (or other public agency) to serve the public interest but does not include the reconstruction or renovation of privately owned property that is leased by the City (or other public agency).
[ORS 279C.800]

Purchasing Contracting Agency

A contracting agency that procures Goods, Services or Public Improvements from a Contractor based on the Original Contract established by an Administering Contracting Agency.
[ORS 279A.200]

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Recycled Materials

Recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as defined in ORS 279A.010(1)(ii)).
[OAR 137-046-0110]

Request for Proposals or RFP

All documents, whether attached or incorporated by reference, used for soliciting Proposals.
[ORS 279B.005]

Request for Qualifications or RFQ

A Written document issued by the City to which Contractors respond in Writing by describing their experience with and qualifications for the Services, Personal Services or Architectural, Engineering or Land Surveying Services, or Related Services, described in the document.
[OAR 137-046-0110]

Request for Quotes

A Written or oral request for prices, rates or other conditions under which a potential Contractor would provide Goods or perform Services, Personal Services or Public Improvements described in the request.
[OAR 137-046-0110]

Requirements Contract

A Contract in which the Person agrees to supply all of the City's requirements that arise for an item or items within a specified time period.

Resident Bidder

A Bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid, has a business address in this state and has stated in the bid whether the Bidder is a "Resident Bidder" under this paragraph.
[ORS 279A.120]

Responsible

Meeting the standards set forth in BPC 47-0640 or BPC 49-0390(2), and not debarred or disqualified by the City under BPC 47-0575 or BPC 49-0370.
[OAR 137-046-0110]

Responsible Offeror

A Responsible Bidder or a Responsible Proposer or a Person who has submitted an Offer and meets the standards set forth in BPC 47-0640 or BPC 49-0390(2), and who has not been debarred or disqualified by the City under BPC 47-0575 or BPC 49-0370.
[OAR 137-046-0110]

Responsive

Having the characteristic of substantial compliance in all material respects with applicable solicitation requirements.

Responsive Offer

A Responsive Bid or a Responsive Proposal or other Offer that substantially complies in all material respects with applicable solicitation requirements.
[OAR 137-046-0110]

Rules

The Rules of Procedure for Public and Personal Services Contracts adopted by the Contract Review Board of the City of Beaverton and including amendments thereto.

Services

Trade Services, Personal Services, or any combination thereof.

Signature

Any Written mark, word or symbol that is made or adopted by a Person with the intent to be bound and that is attached or is logically associated with a Written document to which the Person intends to be bound.

[OAR 137-046-0110]

Signed

Either that (1) a Written document contains a Signature or that (2) the act of making a Signature has occurred, as the context requires.

Solicitation Document

An Invitation to Bid (ITB), a Request for Proposals (RFP), a Request for Quotes or other similar document issued to invite Offers from prospective Contractors pursuant to ORS Chapter 279B or 279C. The following are not Solicitation Documents if they do not invite Offers from prospective Contractors: a Request for Qualifications, a prequalification of bidders, a request for information, or a request for product prequalification.

[OAR 137-046-0110]

Specification

A description of the physical or functional characteristics, or of the nature of the Goods or Services, including any requirement for inspecting, testing, or preparing the Goods or Services for delivery and the quantities or qualities of the Goods or Services to be furnished under a Contract. Specifications generally will state the result to be obtained and occasionally, may describe the method and manner of performance.

[OAR 137-046-0110]

Surplus Property

Property that is in excess of the present and foreseeable needs of the City.

Trade Services

All services other than Personal Services.

Writing

Letters, characters and symbols inscribed on paper by hand, print, type or other method of impression, intended to represent or convey particular ideas or meanings. "Writing," when required or permitted by law, or required or permitted in a Solicitation Document, also means letters, characters and symbols made in electronic form and intended to represent or convey particular ideas or meanings.

[OAR 137-046-0110]

Written

Existing in Writing.

[OAR 137-046-0110]

CONTRACT PREFERENCES

46-0300 Preference for Oregon Goods and Services

A. Award When Offers Identical.

When the City receives Offers identical in price, fitness, availability and quality, and chooses to Award a Contract, the City shall Award the Contract based on the following order of precedence:

1. The City shall Award the Contract to the Offeror among those submitting identical Offers who is offering Goods or Services, or both, or Personal Services that have been manufactured or produced in Oregon.
2. If two or more Offerors submit identical Offers, and they all offer Goods or Services, or both, or Personal Services that have been manufactured or produced in Oregon, the City shall Award the Contract by drawing lots among the identical Offers. The City shall provide to the Offerors who submitted the identical Offers notice of the date, time and location of the drawing of lots and an opportunity for these Offerors to be present when the lots are drawn.
3. If the City receives identical Offers, and none of the identical Offers offer Goods or Services, or both, or Personal Services that have been manufactured or produced in Oregon, then the City shall Award the Contract by drawing lots among the identical Offers. The City shall provide to the Offerors who submitted the identical Offers notice of the date, time and location of the drawing of lots and an opportunity for these Offerors to be present when the lots are drawn.

B. Determination of Whether Offers are Identical.

The City shall consider Offers identical in price, fitness, availability and quality as follows:

1. Bids received in response to an Invitation to Bid issued under ORS 279B.055 or ORS 279C.335 are identical in price, fitness, availability and quality if the Bids are Responsive, and offer the Goods or Services, or both, or Personal Services, described in the Invitation to Bid at the same price.
2. Proposals received in response to a Request for Proposals issued under ORS 279B.060 and BPC 47-0260 through BPC 47-0263, or ORS 279C.400 and BPC 49-0600 (incorporating by reference OAR 137-049-0650) are identical in price, fitness, availability and quality if they are Responsive and achieve equal scores when scored in accordance with the evaluation criteria set forth in the Request for Proposals.
3. Offers received in response to a Special Procurement conducted pursuant to ORS 279B.085 are identical in price, fitness, availability and quality if, after completing the contracting procedure approved by the Contract Review Board, the City determines, in Writing, that two or more Proposals are equally Advantageous to the City.
4. Offers received in response to an intermediate Procurement conducted pursuant to ORS 279B.070 are identical if the Offers equally best serve the interests of the City in accordance with ORS 279B.070(4).

C. Determination of Whether Goods or Services are Manufactured / Produced in Oregon.

For the purposes of complying with this Rule, the City shall determine whether a Contract is predominantly for Goods, Services or Personal Services and then use the predominant purpose to determine if the Goods, Services or Personal Services are manufactured or produced in Oregon. The City may request, either in a Solicitation Document, following Closing, or at any other time the City determines is appropriate, any information the City may need to determine if the Goods, Services or Personal Services are manufactured or produced in Oregon. The City may use any reasonable criteria to determine if Goods, Services or Personal Services are manufactured or produced in Oregon, provided that the criteria reasonably relate to that determination, and provided that the City applies those criteria equally to each Offeror.

D. Procedure for Drawing Lots.

When this Rule calls for the drawing of lots, the City shall draw lots by a procedure that affords each Offeror subject to the drawing a substantially equal probability of selection and that does not allow the person making the selection the opportunity to manipulate the drawing of lots to increase the probability of selecting one Offeror over another.

46-0310 Reciprocal Preferences

When evaluating Bids pursuant to BPC 47-0255, BPC 47-0257 or BPC 49-0390 and applying the reciprocal preference provided under ORS 279A.120(2)(b), the City may rely on the list prepared and maintained by the State pursuant to ORS 279A.120(4) to determine whether the Nonresident Bidder's state gives preference to in-state Bidders and the amount of such preference.

46-0320 Preference for Recycled Materials and Supplies

A. Preference.

Pursuant to ORS 279A.125, the City shall give preference to the procurement of Goods manufactured from Recycled Materials if each of the following four conditions exist:

1. The recycled product is available;
2. The recycled product meets applicable standards;
3. The recycled product can be substituted for a comparable non-recycled product; and
4. The cost of the recycled product's costs do not exceed the cost of the non-recycled products by more than five percent, or a higher percentage if a written termination is made by the City and set within the solicitation document. For purposes of making the foregoing determination, the City shall consider the costs of the Goods following any adjustments the City makes to the price of the goods for purposes of evaluation pursuant to BPC 46-0310.

B. Definition.

As used in this Section, "recycled product" means all materials, goods and supplies, not less than 50 percent of the total weight of which consists of secondary and post-consumer waste with not less than ten percent of its total weight consisting of post-consumer waste. "Recycled product" also includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product's form.

COOPERATIVE PROCUREMENT

46-0400 Cooperative Purchasing Program; General

A. Authority.

The City may participate in, sponsor, conduct or administer Cooperative Procurements as follows:

1. The City may participate in, sponsor, conduct or administer Joint Cooperative Procurements to establish Contracts or Price Agreements for Goods or Services, that use source selection methods substantially equivalent to those set forth in ORS 279B.055, 279B.060, or 279B.085 or to establish Contracts for Public Improvements that use a Competitive Bidding process substantially equivalent to that set forth in ORS 279C.005 through 279C.870.
2. The City may participate in, sponsor, conduct or administer Permissive Cooperative Procurements to establish Contracts or Price Agreements for the acquisition of Goods or Services that use source selection methods substantially equivalent to those set forth in ORS 279B.055 or 279B.060.
3. The City may participate in, sponsor, conduct or administer Interstate Cooperative Procurements to establish Contracts or Price Agreements for the acquisition of Goods or Services that use source selection methods substantially equivalent to those set forth in ORS 279B.055 or 279B.060.

B. Required Competitive Process.

A solicitation and Award process uses source selection methods substantially equivalent to those identified in ORS 279B.055, ORS 279B.060 or ORS 279B.085 when it has the characteristics set forth in ORS 279A.200 (2). The City shall determine in Writing, whether the solicitation and Award process for an Original Contract arising out of a Cooperative Procurement is substantially equivalent to those identified in ORS 279B.055, ORS 279B.060 or ORS 279B.085 in accordance with ORS 279A.200(2).

46-0410 Responsibilities of Administering / Purchasing Contracting Agency

A. Administering Contracting Agency.

If the City acts as an Administering Contracting Agency of a Cooperative Procurement, the City may establish the conditions under which Persons may participate in the Cooperative Procurement administered by the City. Such conditions may include, without limitation, whether each Person who participates in the Cooperative Procurement must pay administrative fees to the City, whether each Person must enter into a Written agreement with the City, and any other matters related to the administration of the Cooperative Procurement and the resulting Original Contract. If the City acts as an Administering Contracting Agency it may, but is not required to, include provisions in the Solicitation Document for a Cooperative Procurement and advertise the Solicitation Document in a manner to assist the Purchasing Contracting Agencies' compliance with the Beaverton Purchasing Code.

B. Purchasing Contracting Agency.

If the City, acting as a Purchasing Contracting Agency, enters into a Contract based on a Cooperative Procurement, the City shall comply with the Beaverton Purchasing Code, including without limitation those sections of the Beaverton Purchasing Code that govern:

1. The extent to which the City may participate in the Cooperative Procurement;
2. The advertisement of the Solicitation Document related to the Cooperative Procurement; and
3. Public Notice of the City's intent to establish Contracts based on a Cooperative Procurement.

[OAR 137-046-0410]

46-0420 Joint Cooperative Procurements

If the City chooses to participate in, sponsor, conduct or administer a Joint Cooperative Procurement, it may do so only in accordance with ORS 279A.210.

[OAR 137-046-0420]

46-0430 Permissive Cooperative Procurements

If the City chooses to participate in, sponsor, conduct or administer a Permissive Cooperative Procurement, it may do so only in accordance with ORS 279A.215.

[OAR 137-046-0430]

46-0440 Advertisements Relating to a Permissive Cooperative Procurement

A. When Notice Required

For purposes of determining whether the City must give Notice of intent to establish a Contract through a Permissive Cooperative Procurement as required by ORS 279A.215(2)(a), the estimated amount of the procurement will exceed \$250,000 if:

1. The City's Contract arising out of the Permissive Cooperative Procurement expressly provides that the City will make payments over the term of the Contract that will, in aggregate, exceed \$250,000, whether or not the total amount or value of the payments is expressly stated; or
2. The City's Contract arising out of the Permissive Cooperative Procurement expressly provides for payment, whether in a fixed amount or up to a stated maximum amount, that exceeds \$250,000; or
3. At the time the City enters into the Contract, the City reasonably contemplates, based on historical or other data available to the City, that the total payments it will make for Goods or Services, or both, or Personal Services, under the Contract will, in aggregate, exceed \$250,000 over the anticipated duration of the Contract.

B. Content of Notice

If the City intends to establish a Contract arising out of the Permissive Cooperative Procurement it administers may satisfy the Notice requirements set forth in ORS 279A.215(2)(a) by including the information required by ORS 279A.215(2)(b) in the Solicitation Document related to the Permissive Cooperative Procurement, and including instructions in the Solicitation Document to potential Offerors describing how they may submit comments in response to the City's intent to establish a

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Contract through the Permissive Cooperative Procurement. The content and timing of such Notice shall comply in all respects with ORS 279A.215(2), ORS 279A.215(3) and the Beaverton Purchasing Code.
[OAR 137-046-0440]

46-0450 Interstate Cooperative Procurements

If the City chooses to participate in, sponsor, conduct or administer an Interstate Cooperative Procurement may do so only in accordance with ORS 279A.220.
[OAR 137-046-0450]

46-0460 Advertisements of Interstate Cooperative Procurements

A. Advertisement in Oregon.

The Solicitation Document for an Interstate Cooperative Procurement is advertised in Oregon for purposes of ORS 279A.220(2)(a) if it is advertised in Oregon in compliance with ORS 279B.055(4) or ORS 279B.060(4) by:

- 1 The Administering Contracting Agency;
- 2 The Purchasing Contracting Agency;
- 3 The Cooperative Procurement Group, or a member of the Cooperative Procurement Group, of which the Purchasing Contracting Agency is a member; or
- 4 Another Purchasing Contracting Agency that is subject to the Public Contracting Code, so long as such advertisement would, if given by the Purchasing Contracting Agency, comply with ORS 279B.055(4) or 279B.060(4) with respect to the Purchasing Contracting Agency.

B. Advertisement on Behalf of a Purchasing Contracting Agency.

A Purchasing Contracting Agency or the Cooperative Procurement Group of which the Purchasing Contracting Agency is a member satisfies the advertisement requirement under ORS 279A.220(2)(b) if the notice is advertised in the same manner as provided in ORS 279B.055(4)(b) and (c).
[OAR 137-046-0460]

46-0470 Protests and Disputes

A. Protest by Offeror or Potential Offeror.

An Offeror or potential Offeror wishing to protest the procurement process, the contents of a solicitation document related to a Cooperative Procurement or the Award or proposed Award of an Original Contract shall make the protest in accordance with ORS 279B.400 through 279B.425 unless the Administering Contracting Agency is not subject to the Public Contracting Code. If the Administering Contracting Agency is not subject to the Public Contracting Code, then the Offeror or potential Offeror shall make the protest in accordance with the processes and procedures established by the Administering Contracting Agency.

B. Other Protests.

Any other protests related to a Cooperative Procurement, or disputes related to a Contract arising out of a Cooperative Procurement, shall be made and resolved as set forth in ORS 279A.225.

C. Reservation of Rights.

The failure of a Purchasing Contracting Agency to exercise any rights or remedies it has under a Contract entered into through a Cooperative Procurement shall not affect the rights or remedies of any other Contracting Agency that participates in the Cooperative Procurement, including the Administering Contracting Agency, and shall not prevent any other Purchasing Contracting Agency from exercising any rights or seeking any remedies that may be available to it under its own Contract arising out of the Cooperative Procurement.
[OAR 137-046-0470]

46-0480 Contract Amendments

The Purchasing Contracting Agency may amend a Contract entered into pursuant to a Cooperative Procurement as set forth in BPC 50-0035.